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April 7, 1999

Office of the Fiscal Assistant Secretary  
U.S. Department of the Treasury  
Room 2112  
1500 Pennsylvania Avenue, N.W.  
Washington D.C. 20220

Re: Possible Regulation Regarding Access to Accounts

Dear Sir or Madam:

Citicorp Services Inc. (Citicorp), a subsidiary of Citigroup, Inc., is providing this commentary regarding your agency's notice, "Possible Regulation Regarding Access to Accounts at Financial Institutions Through Payment Service Providers," 31 CFR Chapter II, as reported in *Federal Register*, Vol. 64, No. 5, at page 1149.

Introduction

Citicorp recently commented upon a topic related to the above-described matter, namely the attributes for the Electronic Transfer Account (ETA<sup>sm</sup>), as proposed by the U.S. Department of the Treasury (Treasury). The ETA<sup>sm</sup> is part of Treasury's response to the requirements of the Debt Collection Improvement Act of 1996 (Act), which expressed Congress' intent that the vast majority of Federal payments would migrate to Electronic Funds Transfer (EFT) by January 1, 1999. This provision of the Act and the regulations for its implementation are generally referred to as "EFT '99."

In addition to Treasury's development of the ETA<sup>sm</sup>, the original mandatory nature of EFT '99 prompted the private sector to respond to the anticipated increase in demand for EFT services with several new types of consumer accounts. However, recent actions have made key provisions of EFT '99 largely voluntary. Even so, several of the products and services that the former mandate inspired are becoming realities in the market place. Properly designed, these products and services can be highly supportive of the Act's original legislative goal.

Citicorp is already a significant provider of EFT services to Federal payment recipients through several different debit card applications. Some of these are operated in conjunction with certain Electronic Benefit Transfer (EBT) programs, a debit card service that distributes benefits under the U.S. Department of Agriculture Food Stamp Program and other Federal and state-administered support programs for needy recipients. Other Citicorp-managed debit cards for Federal payments are stand-alone services.

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### **Comment on Proposal to Regulate**

As was the case when Treasury requested comments on the ETA<sup>sm</sup> attributes, Citicorp is highly qualified to comment on Treasury's current regulatory proposal. However, Treasury should consider all relevant factors in determining whether additional Federal rulemaking in this area is necessary or appropriate. Though Treasury regulates many banking activities, we believe that the current proposal if applied too broadly presents the possibility of controls over private contracts among banks, service providers and customers that are beyond Treasury's previous regulatory function.

After reviewing Treasury's proposal, we have concluded that our debit card services for Federal payments provide most of the advantages and consumer benefits that Treasury has outlined as desirable. Specifically, these include:

- Elimination of paper checks through direct deposit and EFT
- Access at automated teller machines (ATMs) and many national and regional Point-of-Sale (POS) locations
- Account security through use of a Personal Identification Number (PIN)
- Consumer protection through applicable banking regulations
- Cardholder ability to manage funds by allowing full or partial withdrawals
- Service levels and consumer costs competitive with traditional bank products
- A banking relationship with no minimum balance required

Following are Citicorp's responses to the specific topics for which Treasury has solicited comment.

*"Should Treasury regulate or prohibit arrangements between financial institutions and payment service providers in which electronic Federal payments are deposited into a recipient's non-ETA<sup>sm</sup> account at a financial institution but made available to the recipient through a payment service provider?"*

Treasury should not prohibit such arrangements and generally should regulate them only in the event such arrangements unfairly impede consumer choice or circumvent Federal measures for account protection. The ETA<sup>sm</sup> regulations already prohibit financial institutions from using payment service providers for access to an ETA<sup>sm</sup>. While we do not believe that such a policy is required, we understand Treasury's desire to ensure that appropriate consumer protections are available for this new type of account. When proposing regulations for new financial products and services, however, it is appropriate for Treasury to consider, first, to what extent Treasury's exercise of regulatory power is appropriate, and second, whether it is needed.

Such an analysis is necessary to prevent an unwarranted and ultimately detrimental extension of Treasury's Federal regulatory scope. For example, to issue a blanket prohibition on private-sector contractual arrangements for non-ETA<sup>sm</sup> products would be an unjustified and inappropriate governmental inroad into the private sector and the open

market. It would also be contrary to the goals of EFT '99 and would significantly reduce the possibility of improved access to financial services for millions of families and individuals.

For purposes of this discussion, however, we will assume that Treasury has the authority to regulate the products described in its proposal. From the discussion Treasury has provided, we must conclude that its primary concern is under what circumstances the extension of the EFT system to include payment service providers for Federal payment distribution purposes may create a risk to consumers. If so, the question inherent in Treasury's proposal is how and when does the involvement of a payment service provider in this process compel Treasury to monitor, regulate or even prohibit such entities from participating in that system.

We must also conclude from Treasury's discussion that the source of any risk is in the potential for a payment service provider to exercise undue control over consumers' funds or otherwise disrupt what has become a well-defined relationship between the EFT consumer and the financial institution. This disruption would presumably be characterized by the consumer's loss of the ability to directly control deposited Federal funds as well as the loss of regulatory protection typically extended to consumers of a financial institution's EFT services.

However, the mere involvement of payment service providers in the funds distribution process does not mean that such disruptions will occur. The participation of third parties between the consumer and the financial institution is unavoidable, given the scope of the national EFT system. Financial networks, correspondent banks, ATM owners, POS service entities, telecommunication companies and other service providers are among the necessary EFT system participants. Treasury's real concern should be whether payment service providers are introduced into the EFT system in a way that creates the potential to so limit consumer service and choice or otherwise increase risk to the consumer that Treasury is required to issue new protective regulations.

So long as consumers retain the ability to access funds without undue or inappropriate restrictions and are covered by the basic consumer protections available to the EFT customers of financial institutions, we fail to see why employing a payment service provider as an additional outlet of funds presents a threat. This requires, however, that the payment service provider's involvement be as "transparent" to the consumer as is the involvement of the various EFT participating entities named above.

We would agree, for example, that a payment service provider who requires EFT consumers to purchase additional financial and non-financial products as a condition of accessing the consumer's account would not be a "transparent" participant. Allowing a payment service provider to permit consumers to obtain their funds only through an exclusive access arrangement or in another highly restrictive manner would also be adverse to consumers' ability to control their finances. Finally, a payment service provider who holds the consumer's funds in a way that is less than fully FDIC-insured or

that presents the possibility of the loss of funds through provider insolvency is also troubling.

Generally, our position on the participation of payment service providers is that Treasury will best serve the public interest by focusing on any undue restrictions on funds access that may result and by preventing the potential loss of consumer protections that are inherent in a consumer's direct financial institution relationship. It is not the introduction of the payment service provider as an EFT access point, taken by itself, which presents a risk.

For example, Citicorp's debit card systems for Federal payments rely on the national EFT system of ATMs and POS devices to provide consumers with direct access to their accounts. We keep these funds in accounts that are fully FDIC-insured and covered under Federal Reserve Regulation E (12 CFR Part 205). Where our systems involve payment service providers, these entities serve as supplementary outlets that the consumer may optionally use to access Federally deposited funds. The payment service provider is not the consumer's exclusive point of access to the account, consumers are not required to purchase other services to obtain their funds, nor are the basic EFT consumer protections compromised in this relationship.

The extension of the EFT system to payment service providers in this manner actually expands consumer access to EFT. By using points of access that are both convenient and familiar, this approach helps to address the service needs of the under-served clientele that Treasury intends to reach. In a service model such as this, additional Treasury regulation is both inappropriate and unnecessary. Consumer protection and EFT access to funds is generally at parity with that of other consumers of EFT services in their relationships with financial institutions.

Even in systems where access is not at parity, there remains an argument that open market competition is the best method for determining the optimum combination of account access, fees and services. Consumers will select those debit card products that provide an acceptable level of access at a reasonable price. Those products that fail to do so should also fail in the marketplace. Experience has shown that competition leads both to lower costs and improved services for consumers.

Treasury has also requested comments on costs and benefits of such regulations and their likely impact on smaller businesses. We believe that regulations tending to needlessly discourage financial institution relationships with payment service providers have the effect of denying financial institutions of all sizes access to a cost-effective method for reaching under-served communities. They would also deny payment service providers an effective method for improving their services. Many payment services providers are small businesses that must rely on cooperative ventures for economies of scale needed to effectively compete.

*"Do such arrangements deny the recipient either: (a) an account at a financial institution, (b) access to such account, (c) access at a reasonable cost, or (d) the same consumer protections with respect to the account as other account holders at the same financial institution?"*

Such relationships do not inherently result in any of these consequences. We believe this is proven by the nature of the debit card services that we now offer or are currently planning to support. Once again, however, Treasury's emphasis should be on the qualitative impact upon the consumer of introducing a new participant into the EFT system and into the relationship between the consumer and the financial institution.

Citicorp's debit card systems for Federal payments, such as our planned system that incorporates payment service providers, offer EFT services at a reduced cost, provide traditional consumer protections, and maintain consumer control over how, when and where funds are accessed. We do this by using banking technology and a variety of familiar consumer EFT sources to connect consumers to accounts that we establish in our corporate-affiliated banks.

Thus, consumers using Citicorp-supported debit cards to access their Federal funds enjoy the safety and soundness of a relationship with a financial institution, including the consumer protections that this relationship implies. Compared to other available banking options, we believe that our fees for these services are reasonable. Again, however, it is the open market that should be the ultimate judge of what constitutes a reasonable cost for services, not a government-imposed price control.

The net result of the introduction of new EFT products and services is more consumer choice in a market that is under-served. Consumers who want a traditional bank account and direct deposit of their Federal payments can obtain this service through one of our affiliated Citibank entities or through one of our competitor banks. Consumers who choose one of the Federal debit card options that we support will obtain the level of access and basic consumer protections offered to bank customers. Cardholders using our debit card products and services for Federal payments therefore

- Are not denied an account at a financial institution, since this is a key component of our system
- Are not denied access to the account, since direct access is provided electronically, through a debit card usable at a variety of outlets
- Are provided access at a reasonable cost, appropriate to support the level of services offered
- Are provided with consumer protections equivalent to holders of more traditional bank accounts

Debit card products and services such as those we support are an alternative available to consumers who need or desire this type of service. Citicorp-supported debit cards and their corresponding Federal payment accounts are designed so that cardholder empowerment is significant. Direct consumer access to funds is national, through full or

partial withdrawals at ATMs, through many national or regional POS networks and, in some cases, through payment service providers; an option that expands, rather than restricts, access to funds.

As mentioned previously, in our system the consumer's account is FDIC-insured and protected by Regulation E. Cardholders are provided with full disclosure of account terms and receive monthly statements detailing transaction activity, including fees. In addition, since this is an online, electronic account with no minimum balance and no checking privileges, cardholders cannot overdraw the account and will not be subject to costly overdraft charges associated with traditional bank checking accounts.

Cardholders can manage their service fees by selecting the most convenient ATM or POS terminal location or other distribution outlet, and identifying access points that have minimal or no surcharges. Cardholders can use their printed receipts or the toll free telephone help line shown on the card for balance inquiries at no charge. The help line also provides cardholders with the ability to obtain transaction history information, report compromised PINs and identify lost or stolen cards for immediate deactivation.

In general, competition for this new sector of the EFT market is the best method for controlling fees and determining service levels. Externally imposed fee controls will discourage the EFT industry from offering products and services to the population originally intended to be served through EFT '99. Eventually, this will reduce the consumer choices in EFT and the availability of other financial services to this underserved population. This will also be the result if Federal regulations mandate excessive service levels at unreasonably low fees.

*"Should all payment service providers be subject to regulation, or only a particular subset, and if only a subset, what is the basis for such distinction?"*

This issue is far more complex than the question implies. The term "payment service providers" as used in Treasury's proposal includes a wide variety of business concerns. A more precise definition is required, as well as an accounting of the activities Treasury would regulate, before any specific proposed regulations upon payment service providers are issued and evaluated.

Millions of individuals and households currently manage their financial transactions through payment service providers for any number of reasons, including personal choice. Presumably, these consumers will still be able to select what services they will or will not buy from a payment service provider, including but not limited to an electronic account option. Federal efforts to prohibit, limit or control these relationships, though well intentioned, could be duplicative of state and local regulations and could reduce the options available to this group of consumers at a time when the private sector is seeking to expand them.

We believe that Treasury appropriately serves the interests of consumers by ensuring that access to funds and consumer protections are maintained as EFT services extend to include more Federal payments through more access points. This is best accomplished, however, by focusing on the quality of the consumer's access to funds and related consumer protection rather than on the nature of the business of the various new participants in the EFT system. This applies not only to payment service providers, but also to emerging technologies and services such as the Internet and others yet to be developed.

### Conclusion

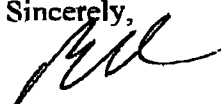
New products and services are emerging in response to the gradual migration of Federal payments to EFT. Treasury must recognize that the introduction of new access points and service participants is a fundamental characteristic in EFT expansion. As these changes occur, we urge Treasury to remain focused on whether consumers are able to access funds in a way that duplicates the most essential, desirable features of the consumer-financial institution relationship, including direct access to funds and the appropriate consumer protection. Treasury's decisions on whether or how to regulate in this area should not unnecessarily discourage the expansion of services that will benefit both consumers and the government where such features are included.

The EFT debit cards that our company supports for Federal payments generally improve upon the existing levels of financial services being offered to consumers in need of the services. They are also designed to include the features of consumer access and protection that Treasury has identified as important. In general our EFT services offer:

- Broader, safer, more convenient access to funds
- The ability of cardholders to manage funds and fees
- Electronic withdrawal and purchase capabilities as needed
- The provision of basic banking consumer protections
- Uniform EFT services at a reasonable, competitive cost to the consumer
- An opportunity for the under-served to enter mainstream banking

Treasury's proposal cites several types of private-sector products and services that support the Federal goal of converting the maximum number of check recipients to EFT. The debit cards and systems that our company supports appear to be responsive to all of Treasury's concerns expressed in the proposal to regulate. Significantly, however, this was the result of an open-market response to commercial opportunities, and not the result of a government mandate on the EFT industry or a new system of Federal regulations.

Sincerely,



Brian Claire  
Vice President  
Citicorp Services Inc.